

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

INITIAL STATEMENT OF REASONS

Subject: Portable Amusement Ride Fees

TITLE 8 of the CALIFORNIA CODE OF REGULATIONS
Division 1. Department of Industrial Relations
Chapter 3.2. California Occupational Safety and Health Regulations
Subchapter 2. Regulations of the Division of Occupational Safety and Health
Article 6.1. Amusement Ride Inspection Fee Schedule
Section 344.18. Portable Amusement Ride Fee Schedule

PROBLEM STATEMENT

The Amusement Ride and Tramway Unit ("the ART Unit") of the Division of Occupational Safety and Health ("Division") is not collecting enough in inspection fees to fund its portable amusement ride program. The purpose of this proposed regulatory amendment ("the Proposed Rulemaking") is to increase the hourly rate the ART Unit charges for the work of its engineers in order to fund the portable amusement ride program.

By way of background, the California Amusement Rides Safety Law (Labor Code sections 7900-7919) took effect in 1969, providing for the inspection of portable amusement rides. Shortly thereafter, both the Occupational Safety and Health Standards Board and the Division adopted regulations to implement the legislation. The regulations govern rides in locations such as carnivals, fairs, community events, festivals, weekend fundraisers, and other locations.¹

Each year, owners of portable amusement rides who intend to operate in California are required to apply for permits to operate. As part of the permitting process, the ART Unit inspects the portable amusement rides for safety. Labor Code section 7904 authorizes the ART Unit to collect fees for these inspections to cover the cost of administering the portable amusement ride program. Such fees shall be charged to ride owners and operators who receive the ART Unit's services, such as approvals, determinations, permits, investigations, inspections and reinspections, certifications and recertifications, receipt and review of certificates, and reports and inspections. In fixing the amount of the fees charged by the ART Unit, the Division may include direct costs plus a reasonable percentage attributable to the indirect costs to the ART Unit for administering the portable amusement ride program. Any fees charged pursuant to Section 7904 must be set forth in regulations.

¹ Since 2000, permanent amusement rides found in fixed locations such as theme parks have been regulated under a separate set of statutes known as the Permanent Amusement Ride Safety Inspection Program (Labor Code sections 7920 – 7932).

Currently, the ART Unit is charging \$206 per hour for conducting inspections pursuant to an emergency fee regulation that took effect in June of 2017. Immediately prior to the promulgation of the emergency fee regulation, the ART Unit was charging only \$125 per hour for its inspection services. The revenue the ART Unit collected at the \$125 rate was insufficient to fund the portable amusement ride program. Therefore, the Division needs to increase the hourly rate for the ART Unit's inspections in order to fund the portable amusement ride program.

BENEFITS OF THE PROPOSED RULEMAKING

The objective of the Amusement Rides Safety Law is to ensure the safe installation, repair, maintenance, use, operation, and inspection of portable amusement rides for the protection of the general public who use the portable amusement rides. The Proposed Rulemaking would authorize the ART Unit to charge the higher fees necessary to fund the important public safety functions described in Labor Code section 7904. Without this fee increase, the Division cannot adequately fund its portable amusement ride operations and cannot meet its objective of ensuring the safety of ride patrons. The Proposed Rulemaking would also have collateral benefits to worker safety, in that the ART Unit's inspections should identify defects and other problems that might create occupational hazards as well as public safety hazards. The Proposed Rulemaking would not have a significant effect on the environment.

PURPOSE AND NECESSITY

As indicated above, the ART Unit is currently charging \$206 per hour for the services it provides pursuant to an emergency regulation that first took effect in June 2017. (8 C.C.R. §344.18.) Time spent by ART Unit staff performing inspections and other functions shall be billed in quarter-hour increments, rounded up to the nearest quarter hour. The Proposed Rulemaking would codify the \$206 hourly fee as a regular, non-emergency regulation.

Prior to the emergency regulation, Section 344.18 was last amended effective January 20, 2011. That amendment created a fee structure similar to the one used for permanent amusement rides (See 8 C.C.R. §344.16,) as follows:

First, Subsection (a) of the 2011 regulation created a \$195 hourly fee for all work performed by ART Unit staff onsite at a portable amusement ride. The \$195 fee would be charged for "actual inspection time" but not for time spent by staff traveling to the site, unless the owner or operator of the portable amusement ride failed to appear at the inspection site or was not prepared for the inspection upon the ART Unit staff's arrival at the site.

Subsection (b) imposed an annual fee on each portable amusement ride inspected in order to offset the ART Unit's travel and administrative costs. The Division based the annual fee on the classification of the subject ride as Small, Medium, Large or Extra Large. The ART Unit classified portable amusement rides using the criteria set forth in §344.18(c), such as the square footage of the ride's footprint and the elevation to which it carried passengers.

The 2011 regulation was challenged in court and invalidated on the ground that it was inconsistent with the Division's fee-setting authority under Labor Code section 7904 as it read in 2011. As a result, the ART Unit was required to continue charging a \$125 hourly fee in accordance with the prior version of Section 344.18.

In 2016, the underlying fee statute Labor Code Section 7904 was amended to remove certain restrictive language and require the Division to "fix and collect all fees necessary to cover the cost of administering this part . . ." which "may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this part." Now, in the Proposed Rulemaking, as in the current emergency regulation, the Division proposes to delete all subsections of the invalidated 2011 regulation in favor of adopting an hourly fee of \$206, billed in quarter-hour increments rounded up to the nearest quarter hour. The proposed language would authorize the ART Unit to charge a fee of \$206 per hour for all work performed in connection with audits, inspections, reinspections, approvals, determinations, certifications and re-certifications, receipt and review of certificates or reports and investigations pertaining to portable amusement rides.

In addition, the Proposed Rulemaking would require the ART Unit to bill its inspectors' time in quarter-hour increments, rounded up to the nearest quarter hour. Thus, for example, if an inspection of a portable amusement ride were to last two hours and 10 minutes, the ART Unit would bill the operator for two and one-quarter hours of inspection time, or \$463.50. Dividing the billable time into quarter-hour increments prevents the ART Unit from receiving a minor windfall by billing for an entire hour if an inspector only works for a few minutes of that hour.

ECONOMIC IMPACT ASSESSMENT

The Division does not anticipate that the Proposed Rulemaking will result in the creation or elimination of any jobs in the State of California. The Proposed Rulemaking will not affect the creation of new businesses in the state or the elimination of existing businesses, and will not affect the expansion of businesses currently doing business within the state.

The direct effect of the fee increase will be limited to the 113 owners and operators of portable amusement rides operating in California. The proposed fee increase applies to any business operating portable amusement rides in this state, and is therefore neutral in its treatment of California businesses compared to businesses from other states.

The Proposed Rulemaking will benefit the welfare and public safety of the residents of the State of California by funding the regulation of portable amusement rides to ensure their safe operation. The Proposed Rulemaking will have no appreciable effect on the state's environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDUES, REPORTS, OR DOCUMENTS ON WHICH THE DIVISION RELIED IN CONNECTION WITH THE PROPOSED RULEMAKING

Division of Occupational Safety and Health, Hourly Billing Rate – Temporary Amusement Rides: Program Cost Detail, attached hereto and incorporated herein by this reference.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The Proposed Rulemaking is a fee regulation and does not mandate the use of specific technologies or equipment.

REASONABLE ALTERNATIVES TO THE PROPOSED RULEMAKING

The Division proposed an alternative regulation that was designed to recoup the direct and indirect operating costs of its portable amusement ride program in 2011. That alternative was held invalid. At this time, rather than bill separately for the costs of its onsite work and travel time, the Proposed Rulemaking would establish an hourly billing rate that incorporates, and compensates the Division for both the inspection time and the travel time of its ART Unit inspectors.

Ultimately, since the inspection fee must charge at a rate sufficient to fund the operations of the portable amusement ride unit, any alternative fee structures would need to have an equivalent effect.

Department of Industrial Relations
Division of Occupational Safety & Health
Hourly Billing Rate - Temporary Amusement Rides

Program Cost Detail

Personal Services		
Salaries and Wages		
003	Permanent	\$504,353
033	Temporary Help	0
083	Overtime	0
Net Salaries and Wages		\$504,353
101	Staff Benefits	237,046
Totals, Personal Services		\$741,399
Operating Expense & Equipment		
201	General Expense	7,540
241	Printing	1,545
251	Communications	10,077
261	Postage	3,153
271	Insurance	0
291	Travel: In-State	54,452
311	Travel: Out-of-State	2,402
331	Training	13
341	Facilities Operations	19,373
361	Utilities	4
382	Cons & Prof Svs-InterDptl	1,616
402	Cons & Prof Svs-External	46,931
428.1	Consolidated Data Center (Teale)	15,529
428.2	Consolidated Data Center (H&W)	1,288
431	Information Technology	10,500
438	Central Admin. Services (Pro Rata)	36,904
439	Central Admin. Services (SWCAP)	0
451	Equipment	425
501	Other Items of Expense	0
601	Special Items of Expense	135
Totals, OE & E		\$211,887
Totals, Pers. Svcs. & OE&E		\$953,286
DOSH's Admin Personal Svcs Cost (94000)		\$59,100
427	Indirect Costs (Distributed Admin.)	57,540
Total Program Cost		\$1,069,926
a/	SUPPORT FROM OSH Fund	-\$323,884

TOTAL PROGRAM COST	\$746,042
AVERAGE ANNUAL INSPECTION HOURS	3,615
HOURLY BILLABLE RATE	\$206.00

a/ Support from OSH Fund includes all travel cost & employee time spent on travel.